

1 APPEARANCES (continued)

2 MS. MARY STEPHENSON
3 160 North LaSalle Street
4 Chicago, Illinois
5 appearing for Staff of the Illinois Commerce
6 Commission.
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18 SULLIVAN REPORTING COMPANY, by
19 Patricia Wesley, CSR
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1 JUDGE GILBERT: Pursuant to the authority of the
2 Illinois Commerce Commission, I now call No. 02-0443,
3 if I could have appearances for the record, please,
4 beginning with complainant.

5 MR. KERBER: On behalf of Ameritech Illinois,
6 Mark Kerber, 225 West Randolph, HQ-25D, Chicago,
7 60606.

8 MR. TOWNSLEY: Appearing on behalf of respondent,
9 MCI WorldCom Communications, Incorporated, and MCI
10 Metro Access Transmission Services, LLC, Darrell
11 Townsley, 205 North Michigan Avenue, Suite 1100,
12 Chicago, Illinois, 60601.

13 MS. STEPHENSON: On behalf of staff of the Illinois
14 Commerce Commission, Mary Stephenson, 160 North
15 LaSalle, Suite C-800, Chicago, Illinois, 60601.

16 JUDGE GILBERT: All right. There's been a filing
17 in this docket on behalf of respondent. It's
18 entitled, "Notice of Automatic Stay." I'll leave it
19 to Mr. Townsley to describe what he's done and then
20 the other parties can respond as they wish.

21 MR. TOWNSLEY: Yes. Your Honor, on July 21,
22 2002, WorldCom, Incorporated, and virtually all of its

1 operating subsidiaries in the United States, filed for
2 bankruptcy in the United States Bankruptcy Court in
3 the Southern District of New York. Based on that
4 filing, which was done under -- pursuant to Chapter 11
5 of the United States Bankruptcy Code, I believe that
6 filing automatically stays private rights of action
7 that have been brought against companies that are now
8 before the bankruptcy court, and that includes the
9 action that Ameritech brought against my client in
10 this particular proceeding, so the notice of automatic
11 stay that just puts the Commission and your Honor on
12 notice that we are before the bankruptcy court and
13 that this matter is automatically stayed by virtue of
14 the fact that we are before that court now.

15 JUDGE GILBERT: Mr. Kerber.

16 MR. KERBER: Your Honor, prior to the filing of
17 bankruptcy, Ameritech Illinois and MCI had indicated
18 to each other their willingness to try to resolve this
19 matter through negotiations.

20 The parties continue to be willing to do
21 so, and, in fact, those efforts are underway. We have
22 had an initial meeting. We have no response at this

1 time to MCI's filing in this case.

2 If negotiations don't work out
3 positively, we would reserve whatever rights we may
4 have to take whatever actions we believe would be
5 appropriate to go forward with this case, whether that
6 be before the bankruptcy court or before this
7 Commission. We have not evaluated those issues at
8 this point.

9 JUDGE GILBERT: Ms. Stephenson, anything?

10 MS. STEPHENSON: No. Staff has no response or
11 filing.

12 JUDGE GILBERT: We'll leave it at this. There's
13 documents on file that purport to stay the
14 proceedings. The complainant is not at this time
15 opposing the obvious ramifications of that document,
16 which is to say the complainant is not asking for any
17 further action right now in the case, so there's
18 really, really nothing important for me to rule on.

19 I would just remind the parties to be
20 aware of the one-year deadline which -- with respect
21 to the complainant before the Commission. And if
22 anyone wants to take any action between now and that

1 deadline, please let me know.

2 JUDGE GILBERT: Although --

3 MR. WEBER: I guess, your Honor, in my view, we
4 would be operating under the fast track schedule
5 rather than the one-year schedule. Prior to this --
6 to this filing by MCI, the parties had worked toward
7 filing a joint motion to stay this for purposes
8 of negotiating, and, in MCI's view, that filing is --
9 as I understand it, would be inappropriate at this
10 point because of the bankruptcy stay would supercede
11 that.

12 In order to avoid creating any type of a
13 conflict between the bankruptcy stay and this court's
14 or this Commission's jurisdiction, my view is that it
15 would just simply stay and toll (sic) any further
16 procedural deadlines or schedules until such time as
17 it's either ultimately dismissed, or the parties'
18 settle, or whatever.

19 I think that the one-year deadline
20 wouldn't apply to this proceeding, in any event,
21 and I think, to the extent where we are operating
22 under the bankruptcy stay, we're told whatever

1 deadlines we have.

2 The reason I point this out is that,
3 and I think Mr. Townsley would agree with me on this
4 -- this is a large and very complex bankruptcy
5 proceeding and my understanding is that MCI's own
6 expectations are that the bankruptcy itself will take
7 9 to 12 months, and that's at the front end and, in my
8 experience, those estimates get longer rather than
9 shorter, as you know, so I think it's unlikely --
10 if we have actually a way to completing the
11 bankruptcy, which is available, I think it would be
12 unlikely that we be completing this in a year;
13 however, given MCI's position, I think it may be
14 unlikely that they would want to be filing for some
15 kind of extension because they -- maybe Mr. Townsley
16 should speak to this -- but they might view that as
17 somehow either unnecessary or conflicting with the
18 bankruptcy stay.

19 MR. TOWNSLEY: I guess I'm -- you know, I just fall
20 back to my position, which is based on what our
21 bankruptcy attorneys have told me, which is this
22 proceeding is stayed automatically by the fact we're

1 before the bankruptcy court.

2 I haven't gone back to look at what the
3 deadline -- procedural deadlines are, whether it's a
4 complaint under, you know, the fast track provisions
5 of the Public Utilities Act or just under the general
6 provisions of the Public Utilities Act, but I do not
7 disagree that it appears as though the bankruptcy
8 proceeding is going to last at least nine months and
9 likely more than a year.

10 In terms of deadlines, I would point
11 out that before -- before we got to the position we
12 are in today, there were outstanding motions to
13 dismiss and everything been stayed, including your
14 response to that, so whether we move forward, based on
15 that briefing, I don't know. I don't mean to
16 complicate matters. I'm just trying to respond to
17 you, Mark.

18 MR. KERBER: We just threw the ALJ more stuff.

19 JUDGE GILBERT: There seems to be a number of
20 questions, the answers to which may not really make
21 much practical difference. I mean, one question is
22 what now governs this proceeding when solely viewed

1 under the Public Utilities Act? Since the complainant
2 received interim relief, do we remain on the fast
3 track?

4 MR. KERBER: I think my understanding would be
5 that we remain on the fast track schedule subject to
6 whatever extensions, agreements, et cetera, are worked
7 out by the parties, but by agreement, and you know we
8 were pretty much there when the bankruptcy interceded.
9 I think we had at that point informally agreed that we
10 were going to stay this thing and try to work it out.

11 JUDGE GILBERT: Okay.

12 MR. KERBER: And then what really happened I think
13 was that the bankruptcy stay, simply, at least in
14 MCI's view, as I said, we are not contesting this for
15 the moment obviating the need to file anything to stay
16 it under Illinois law.

17 JUDGE GILBERT: Then adding in the impact of the
18 bankruptcy, whatever that may be, I understand you
19 are not contesting the filing.

20 How does that relate to our Public
21 Utilities Act? Does it -- does it stay the one year
22 or shorter deadline, whichever applies, or does it

1 have no effect on those things?

2 MR. KERBER: What I don't know, and I have no
3 research, maybe Darrell has any, is that whether the
4 bankruptcy stay tolls other procedural schedules or
5 deadlines and proceedings upon which it impacts.

6 I guess maybe the best resolution to that
7 for today is not to try to resolve it since it isn't
8 before us and hopefully we'll never have to cross that
9 bridge.

10 At some point we may have some kind of
11 an issue about if we come out of bankruptcy one
12 way or another, either because it ends or because we
13 want to pursue it either with the bankruptcy court's
14 permission or through some other procedural event,
15 that we just have to address that possibility.

16 JUDGE GILBERT: Okay.

17 MR. KERBER: Well, the bottom line to me is still
18 that -- the bottom line from me still -- from my
19 client's perspective, we are willing to talk. MCI's
20 willing to talk, and, in fact, we're talking. And as
21 long as that remains true, I remain hopeful that we
22 don't care about any of this other stuff.

1 JUDGE GILBERT: Okay. Well, I mean, there's
2 nothing for me to rule on, I guess what I originally
3 attempted to do, and I'm glad that you interposed
4 the complications that you did, because they exist,
5 and I think I hadn't anticipated them.

6 I guess it's just up to you to decide
7 whether any rights you have here could be compromised
8 either under the fast track procedure or under the
9 one-year procedure under 10-108 as time passes, and I
10 guess it's up to you to decide whether there's
11 anything you want to do about that. I was just trying
12 to flag that issue.

13 MR. KERBER: Basically, it goes down to fair
14 warning. If we get out near a year and there's
15 something that I need to do, then I need to figure it
16 out and do it.

17 JUDGE GILBERT: Yes. I guess I don't know if
18 you are under the fast track to remain under fast
19 track even with interim relief. Let's assume that's
20 true. If that deadline passes, do you then default
21 to the one-year deadline or are you out? I don't
22 know.

1 MR. KERBER: We never had one that I know of. I
2 mean, we never had a situation where that's happened
3 and there's been a question of to fall off the sort of
4 fast track.

5 JUDGE GILBERT: On to the regular track or do you
6 fall out altogether and your complaint is simply not
7 acted upon? I don't know, so I'll leave that all to
8 you. I just wanted to at least raise the question.
9 And what happens after this, I'll just leave to you
10 guys to act or not act.

11 MR. KERBER: Send -- or not send
12 an E-Mail to our bankruptcy person.

13 JUDGE GILBERT: I think we muddied it enough. I
14 have nothing today, other than receive your comments,
15 and I think we have done that. Let's -- unless
16 there's anything else to add, we will just close this
17 without another date. Okay.

18 MR. TOWNSLEY: Thank you, your Honor.

19 MR. KERBER: Thank you.

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1 MS. STEPHENSON: Thank you.
2 (Whereupon, the above
3 matter was adjourned
4 sine die.)
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